

Present:
Mr. Justice Md. Salim

CRIMINAL REVISION NO. 6587 OF 2024

Jahor Miah
..... Petitioner.

-VERSUS-
The State and another
..... Opposite Parties.

Md. Shah Paran Chowdhury
.....For the Petitioner.

Mr. Sajib Chandra Banik, Advocate
..... For the opposite party No.2.

Mr. Monzurul Alam Sujan, DAG
Mr. Md. Siddik Ali, AAG
Mr. Syed Akhtarul Islam, AAG
..... For the State.

Heard on: 29.06.2026 and 06.07.2026

Judgment on: 06.07.2026

By this Rule, the opposite parties were called upon to show cause as to why the judgment and order dated 24.04.2024 passed by the learned Additional Sessions Judge, 1st Court, Brahmanbaria in Criminal Appeal No.123 of 2022 disallowed the appeal and affirming the judgment and order of conviction and sentence dated 21.03.2022 passed by the learned Senior Judicial Magistrate, 1st Court, Brahmanbaria in C.R. Case No.13 of 2019 (Nabinagar) with the effect that convicting the

petitioner under Section 420 of the Penal Code and sentencing him to suffer rigorous imprisonment for 1 (one) year with a fine of Tk.5,000/- in default to suffer simple imprisonment for 1(one) month should not be set aside and or pass such order or orders as to this court seem fit and proper.

The prosecution case, in brief, is that the opposite party No. 2, as the complainant, instituted a complaint before the Chief Judicial Magistrate, Brahmanbaria, against the convict-petitioners under sections 406, 420 and 109 of the Penal Code alleging, inter alia, that on 01.08.2017, the accused persons borrowed a sum of Tk.4,00,000/- from the complainant for the purpose of constructing their dwelling house upon the assurance that the said amount would be repaid within one year. It was further alleged that, upon the expiry of the stipulated period, the complainant demanded repayment of the said amount, but the accused persons failed and refused to repay the loan. Consequently, it was alleged that the accused persons dishonestly misappropriated the said amount, committed criminal breach of trust, and thereby also committed the offense of cheating punishable under sections 406, 420 and 109 of the Penal Code.

Upon receipt of the petition of complaint, the learned Judicial Magistrate, Brahmanbaria, examined the complainant under Section 200 of the Code of Criminal Procedure and took cognizance of the offense under Section 420 of the Penal Code against the convict-petitioner.

The case, ready for trial, was sent to the Senior Judicial Magistrate, 1st Court, Brahmanbaria. The learned Judicial Magistrate framed the charge against the accused under section 420 of the Penal Code. The charge was read over and explained to him, who then pleaded not guilty and claimed to be tried.

During the trial, the prosecution examined 4 witnesses and produced several documents. On the contrary, the defense examined 2 defense witnesses.

After the conclusion of the taking of evidence, the accused-petitioner was examined under Section 342 of the Code of Criminal Procedure, to which he again pleaded his innocence.

However, after the conclusion of the trial, the learned Senior Judicial Magistrate, 1st Court, Brahmanbaria, by the judgment and order dated 21.03.2022 convicted the accused-

petitioner under Section 420 of the Penal Code and sentenced him to suffer rigorous imprisonment for 1(one) year and to pay a fine of Tk.5,000/- in default, to suffer simple imprisonment for one (1) month more.

Being aggrieved by and dissatisfied with the above judgment and order of conviction and sentence, the convict petitioner, as appellant, preferred Criminal Appeal No.123 of 2022 before the Sessions Judge, Brahmanbaria.

Eventually, the learned Additional Sessions Judge, 1st Court, Brahmanbaria, by the judgment and order dated 24.04.2024, disallowed the appeal and affirmed those passed by the trial court below.

Being aggrieved by and dissatisfied with the said judgment and order, the convict, as petitioner herein, came before this court and obtained the instant Rule.

Mr. Md. Shah Paran Chowdhury, the learned advocate appearing on behalf of the petitioner, submits that the alleged transaction was purely a loan transaction involving Tk. 4,00,000/-, and that the dispute, if any, is of a civil nature. He then contends that the prosecution failed to prove that the

petitioner had any fraudulent or dishonest intent at the inception of the transaction, an essential ingredient of the offense under section 420 of the Penal Code. Mere failure to repay the loan cannot, by itself, constitute the offense of cheating. It is, therefore, submitted that the conviction and sentence recorded by the courts below are unsustainable in law and liable to be set aside. Accordingly, he prays that the Rule may be made absolute and the petitioner be acquitted.

Mr. Sajib Chandra Banik, the learned advocate appearing on behalf of the opposite party No. 2, submits that the prosecution has successfully proved the charge under section 420 of the Penal Code by adducing reliable and cogent evidence. He then contends that although the transaction was described as a loan of Tk.4,00,000/-, the petitioner obtained the said amount by inducing the complainant through false representations and with a dishonest intention from the very inception, and thereafter deliberately failed to repay the same, that the trial Court and the appellate Court, upon proper appreciation of the evidence on record, rightly found the petitioner guilty and passed the impugned judgment and order

of conviction and sentence. Accordingly, he prays for discharge of the Rule.

Mr. Monzurul Alam Sujon, the learned Deputy Attorney General, appearing on behalf of the State, adopts the submission of Mr. Sajib Chandra Banik, the learned advocate appearing on behalf of the complainant-opposite party No. 2, and prays for the discharge of the Rule.

We have eagerly considered the submissions of the learned counsel for both parties, and have perused the impugned judgment, evidence, and other materials on record.

In a criminal case, the conviction and sentence must be based on evidence beyond a reasonable doubt, and the prosecution must stand on its own legs throughout without taking advantage of any flaws in the defense.

To prove the charge, the prosecution examined as many as 4 witnesses, including P.W.1 Shayesta Begum, the complainant, who deposed in her examination-in-chief that, owing to the close relationship between the complainant and the accused's family, a sum of Tk.4,00,000/- was obtained by the accused from the complainant as a loan for the purpose of

constructing their dwelling house upon the assurance that the said amount would be repaid within one year. However, upon expiry of the stipulated period, the loan amount was not repaid; rather, it was allegedly used to construct the accused's house. Subsequently, a local shalish (arbitration) was held, but the loan amount was still not repaid. Consequently, the present case was instituted by her. She identified the petition of complaint and her signature thereon.

In cross-examination, this witness denied the suggestion that Jahor Miah lodged C R Case No. 10 of 2009 against Madan Miah and others; that she filed the instant case to save Madan Miah; that she lodged the false case; and that Jahor Miah did not take loan money from her.

P.W.2 Nadira Begum deposed that the complainant was her mother. Then she stated that a sum of Tk. 4,00,000/- had been borrowed by the accused person from her mother on 17 Srabon, 1424 Bangla, for the purpose of constructing their dwelling house, upon the assurance that the said amount would be repaid within one year, but they refused to repay the same on 27th Paosh.

In cross-examination, she stated that Nanno Miah took Tk. 1 lac, Aynamoty took Tk. 1 lac, and Zahor Miah took Tk. 2 lac. She admitted that her grandfather's name is Noab kha. She denied the suggestion that the accused person did not take any money, and she presented false evidence.

P.W. 3, Chandra Bhanu, was declared tendered by the prosecution. During cross-examination by the defense, the witness stated that late Noab Kha was her brother-in-law. It was further stated that she had two sons, namely Sadhan Kha and Majan Kha, and that Ayub Kha was the son of late Noab Kha. She denied the suggestion that, due to a previous litigation between the sons of late Noab Kha and the accused, Zahur Mia, the present false case had been instituted by the complainant and that no money had been borrowed by the accused.

P.W.4 Ayub Kha deposed that the complainant and the accused were known to him. He then stated that a sum of Tk.4,00,000/- had been borrowed by the accused from Shayesta Begum for the purpose of constructing their dwelling house. It was further stated that the said amount had been borrowed from the northern homestead of Shayesta Begum with the assurance that it would be repaid within one year. It was also stated that,

upon the expiry of the stipulated period, the accused refused to repay the said amount.

He denied the suggestion that the accused did not take the money and that he presented false evidence.

On the contrary, D.W.1 Samuj Mia deposed that the complainant, Shayesta Begum, and the accused, Jahur Mia and Nannu Mia, were known to him, as they were residents of the same village. It was stated that he was not aware as to whether any money had been borrowed by the accused from the complainant. It was further stated that he had no knowledge as to whether any village arbitration had been held in connection with the alleged monetary transaction.

D.W.2 Rashed Miah deposed that the complainant, Shayesta Begum, and the accused were known to him. It was stated that he did not know either the present case or the alleged monetary transaction.

A meticulous analysis and careful survey of the statements of witnesses manifest that the complainant claimed the accused petitioner took a loan of Tk. 4,00,000/- from her. It was alleged that the accused-petitioner had borrowed the said

amount from the complainant with a promise to repay it; however, the accused-petitioner failed to fulfill that promise. It is an established principle that to constitute an offense of cheating as described in Section 415 of the Penal Code, there must be a specific allegation that the accused had an initial intention of deceiving the complainant. It is also true that such intention can be gathered from the facts and circumstances because such intention normally is concealed in the mind and is not expressed. If there is an allegation that goods were delivered on credit on a specific promise of repayment within a specific date but the payment was not made within the specific time, it may be inferred that there was an initial intention of deception. However, where the transaction is purely a financial one between the parties, it does not, by itself, attract the ingredients of the offense punishable under section 420 of the Penal Code. This view finds support from the decision of the Appellate Division in M.A. Sukkur Vs. Md. Zahirul Haque's case, reported in 23 BLT (AD) 76, **laid down-**

“The learned Judges of the High Court Division failed to consider that from plain reading of the complaint, it is abundantly clear that it does not

disclose any offense against the petitioner and that a normal financial deal between the debtor and creditor does not come within the scope of any offence and as such the impugned judgment and order is liable to be set aside for the ends of justice.”

In the instant case, the complainant, examined as P.W.1, deposed that the accused persons had borrowed a sum of Tk. 4,00,000/- from her for the purpose of constructing their dwelling house, upon the assurance that the said amount would be repaid within one year. She further stated that, upon the expiry of the stipulated period, the accused persons refused to repay the borrowed amount.

In view of the facts and circumstances of the case, the evidence on record, the discussions made hereinabove, and the settled principles of law, this court is of the considered view that the transaction in question was nothing but an ordinary financial transaction between the parties, giving rise to a civil liability rather than a criminal offense. It further appears that both the learned Judge of the trial Court and the appellate court

failed to appreciate the evidence on record in its true perspective and thereby erroneously found the petitioner guilty.

Accordingly, the impugned judgment and order of conviction and sentence passed by the Courts below suffer from misappreciation of the evidence and misapplication of the law and, as such, we find merit in the Rule.

Since the dispute between the parties is purely of a civil nature, the complainant is at liberty to seek appropriate relief before the competent Civil Court, if so advised and if otherwise maintainable under the law.

In view of the findings made before, we find substance in this Rule.

Resultantly, the Rule is made absolute.

The impugned judgment and order dated 24.04.2024 passed by the learned Additional Sessions Judge, 1st Court, Brahmanbaria in Criminal Appeal No.123 of 2022, which disallowed the appeal and affirmed the judgment and order of conviction and sentence dated 21.03.2022 passed by the learned Senior Judicial Magistrate, 1st Court, Brahmanbaria in C.R. Case No.13 of 2019 (Nabinagar), are hereby set aside.

The accused petitioner is acquitted of the charges leveled against him and discharged from the bail bonds.

Send down the lower court records with a copy of this judgment.

(Md. Salim, J:)

Rakib(ABO)